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# United States Senate

## COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

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October 5, 2006

The Honorable Bruce I. Knight  
Under Secretary for Marketing and  
Regulatory Programs  
U.S. Department of Agriculture  
200-A Jamie L. Whitten Building  
Washington, D.C. 20250

Dear Mr. Knight:

On September 20, Senator Chambliss and we wrote Secretary Johanns requesting a report to the Committee on Agriculture, Nutrition and Forestry detailing the actions the Department has taken to implement recommendations made by the Government Accountability Office (GAO) for improving the operation and functioning of the Livestock Mandatory Reporting program. We also asked for specific responses regarding the following:

1. The percentage of negotiated transactions in which livestock are delivered within the 14-day delivery time period specified in the law and the percentage of negotiated transactions in which delivery is outside this time period and thus are reported as forward contracts.
2. The effects of requiring packer processing plants to report information (including price and volume) regarding total wholesale pork products sales – including any economic effects on producers and consumers and any effects of such reports on confidentiality requirements.
3. Assurances that USDA will continue to provide scanner-based retail price information to the public pursuant to section 257 of the Livestock Mandatory Reporting Act.

We expect you will work with the Secretary to provide responses on the issues listed above. In addition, we ask you to confirm that USDA will make the following improvements to the Livestock Mandatory Reporting program. Most of these requested changes reflect the GAO recommendations, which USDA has previously received, along with specific suggestions for implementing them. In addition, some of the requests respond to producer concerns not specifically covered in the GAO recommendations.

The Honorable Bruce I. Knight

October 5, 2006

Page two

A. In addition to providing the report described above, USDA will work to develop, through regulations, a system to obtain and report information pertaining to those hog and cattle transactions in which the price is set in the same manner as negotiated sales but delivery is to occur beyond the 14-day period specified in the statute. It is our understanding, based on communications from producers and market experts, that packers are increasingly buying hogs and cattle through arrangements identical to negotiated sales, except that the livestock is to be delivered more than 14 days after the price is set. As a result, these transactions are not reported as negotiated sales, but neither do they properly fit into other categories, such as forward or formula contracts. We believe the statute provides USDA the authority to remedy this mismatch of real-world transactions and USDA's existing LMR categories, and the resulting inaccuracy in price information reported to pork and beef producers.

B. USDA will develop a report available to the public at least twice each month that describes the volume, and effect on reported prices, of transactions that are reported by packers but excluded from the Agricultural Marketing Service (AMS) Market News Reports.

C. For purposes of transparency regarding compliance with the LMR Act and USDA's enforcement of it, AMS will provide to the public on a quarterly basis reports containing the results of audits conducted by AMS Audit Review and Compliance, including, at a minimum, information on:

1. the total number of audits conducted;
2. the total number of violations found;
3. examples or descriptions of the violations;
4. the number of packers required to report under the LMR Act; and
5. examples of how the violations were resolved or information as to why the violations are still pending.

USDA will issue annually a report detailing a full comprehensive tally of this information.

D. USDA will assure producers that any producer inquiry through AMS's toll-free number will not be disclosed to a packer unless the producer gives permission for the disclosure.

E. AMS and the Grain Inspection, Packers and Stockyards Administration (GIPSA) will complete their investigation of the matter described by GAO in recommendation six of its report. GAO indicated that the reporting practices of one packer created the possibility that the packer engaged in discriminatory, unfair or deceptive practices by the packer in purchasing livestock. GIPSA did investigate the possibility that the packer paid less than market prices for livestock as a result of giving undue preference to a select group of producers but closed that investigation in September 2005. GAO concluded further investigation by both GIPSA and AMS is warranted because of the unresolved questions about the packer's reporting practices under the LMR Act.



The Honorable Bruce I. Knight  
October 5, 2006  
Page three

In addition, we urge you to ensure that AMS is sharing on an expedited basis any price information that is of interest and use to GIPSA in carrying out its enforcement responsibilities, particularly under the Packers and Stockyards Act. We understand that, because of bureaucratic obstacles, it can take several weeks for AMS to provide needed enforcement-related information to GIPSA. We ask that you inform us if there are any constraints in the LMR Act or any other law on this sharing of data by AMS with GIPSA.

F. AMS and GIPSA will examine whether packers manipulate or skew hog price reports by diverting higher-priced purchases into the live hog spot market so that the purchases are not reflected in the negotiated carcass weighted average price – which is the basis for pricing hogs under most hog procurement contracts. Of course, nothing prohibits a packer from buying hogs on the live spot market, but producers have expressed the concern to us that firms are purposely buying hogs on the live spot market to avoid having purchases of higher-priced hogs reflected in the reported negotiated carcass weighted average price. If this practice occurs, it certainly does not seem fair or above board. AMS and GIPSA ought to investigate the matter and determine if this practice occurs, whether it would be improper or unlawful under existing law, the present authority of USDA to address this type of practice and what change in the law, if any, would be needed to provide USDA adequate authority to prevent purchasing practices by packers that may potentially skew or manipulate reported prices.

Please review the issues we have identified above and confirm within 30 days what USDA has done thus far and what it will do to implement GAO's recommendations as well as the further specific suggestions and requests we have listed above. If there are any problems in providing this information, or taking administrative action to carry out our requests, please let us know and provide the reason or explanation.

We are grateful for your attention to these very important matters and thank you in advance for your cooperation and assistance.

Sincerely yours,



Tom Harkin  
United States Senator



Charles Grassley  
United States Senator